the same Multi-national Companies (MNCs) and foreign carriers that the proposed action was put on hold till further advice.

Sales Tax on telecom services

2733. SHRI RAJKUMAR DHOOT: Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether it is a fact that Hon. Supreme Court has held that the States can't impose sales tax on telecom services;

(b) if so, the details thereof; and

(c) its impact on the proposed budgeted revenue for the financial year 2006-07?

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD): (a) Yes, Sir.

(b) On a Writ Petition (C) No. 183/2003 of BSNL v/s Union of India and others and other related Petitions clubbed therewith, Hon'ble Supreme Court, *vide* Order dated 02-03-2006 has hald that States can not impose sales tax on telecom services. Salient points of the Judgement are given in the enclosed Statement. (*See* below).

(c) Salex tax being State subject, it has no impact on the budgeted revenue of the Central Government.

Statement

Salient points of judgement in the case of WP(C) No. 183/2003 by the Hon'ble Supreme Court

Sl. No.	The issues which arise for consideration in these matters	Decision
A	What are "goods" in telecommunication for the purposes of Article 366(29A) (d)?	Goods do not include electromagnetic waves or radio frequencies for the purpose of Article 366 (29A) (d). The goods in telecommunication are limited to the handsets supplied by the service provider. As far as the SIM cards are concerned, the issue is left for determination by the Assessing Authorities

Sl. No.	The issues which arise for consideration in these matters	Decision
B	Is there any transfer of any right to use any goods by providing access or telephone connection by the telephone service provider to a subscriber?	There may be a transfer of right to use goods as defined in answer to the previous question by giving a telephone connection.
C	Is the nature of the transaction involved in providing telephone connection a composite contract of service and sale? If so, is it possible for the States to tax the sale element?	The nature of the transaction involved in providing the telephone connection may be a composite contract of service and sale. It is possible for the State to tax the sale element provided there is a discernible sale and only to the extent relatable to such sale.
D.	If the providing of a telephone connection involved sale is such sale an inter State one?	The issue is left unanswered.
E.	Would the "aspect theory" be applicable to the transaction enabling the the States to levy sales tax on the same transaction in respect of which the Union Government levies service tax.	The aspect theory would not apply to enable the value of the services to be included in the sale of goods or the price of goods in the value of the service.

2. Further, Hon'ble Justice Dr. A.R Lakshmanan, Member of the Bench, has also viewed that the imposition of sales tax on any facilities of the telecommunication services is untenable in law.

3. The Hon'ble Supreme Court has disposed of the writ petitions and appeals accordingly with "No order as to costs."